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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,704	08/19/2003	Bruce A. Cranner	781-02	5125

23659 7590 12/22/2006  
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EXAMINER
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JOSEPH, TONYA S

ART UNIT	PAPER NUMBER
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3628

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/22/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/643,704		CRANNER, BRUCE A.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Tonya Joseph		3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. Claims 1-6 are directed to a mathematical formula which is a mere abstract idea, and therefore falls within one of the judicial exceptions to patentability. In order for an abstract idea to be patent eligible, the limitations of the claim must set forth a practical application. A practical application results if the claimed invention transforms an article or physical object to a different state or thing; or if the claimed invention produces a useful, concrete, and tangible result. As the claims are currently presented, they include nothing more than a mathematical formula, with no accompanying practical application. The lacking of such a practical application, have rendered the claims nonstatutory. Furthermore, the Examiner notes, one may not patent a process that comprises every "substantial practical application" of an abstract idea, because such a patent "in practical effect would be a patent on the [abstract idea] itself." Benson, 409 U.S. at 71-72, 175 USPQ at 676; cf. Diehr, 450 U.S. at 187, 209 USPQ.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rycraft (Reference U of the attached PTO-892) in view of Official Notice.

7. As per Claim 1, Rycraft teaches ***selecting a baseline price for a billing period*** (see pg. 1 para. 2 line 1, Examiner is interpreting the standing charge as the baseline price); selecting a variable price per event or time period (see pg. 11 para. 3 line 13, Examiner is interpreting ***(C-X)P*** to be a variable price per event, the event being a kilowatt hour of consumption; ***the variable price being negative*** (see pg. 11 para. 3 line 13, Examiner is interpreting ***-(C-X)P*** as being a negative variable price; ***selecting a number of events or a number of time periods*** (see pg. 11 para. 3 line 13, Examiner is interpreting a kilowatt hour of as an event); Rycraft does not explicitly teach ***calculating a total price per billing period***. Official Notice is taken that calculating a total price per billing period is old and well known in the art of consumer economics. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Rycraft to include billing in order to charge a customer incrementally for service used.

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8. As per Claim 2, Rycraft in view of Official Notice teaches the method of claim 1 as described above. Rycraft further teaches wherein the total price is the sum of the baseline price and the product produced by multiplying the variable price and the number of events or time periods (see pg. 11 para. 4 lines 1-4, Examiner is interpreting the account to be the total price). Examiner is further interpreting the event as event being a kilowatt-hour of consumption.

9. As per Claim 3, Rycraft in view of Official Notice teaches the method of claim 2 as described above. Rycraft teaches that the size of **X** can vary dependant upon consumer consumption. Rycraft does not **explicitly teach wherein the absolute value of product of the variable price and the number of events or time periods is less than or equal to the baseline price**. Official Notice is taken that, depending on the value of **X**, the absolute value can be less than or equal to the baseline price. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Rycraft to include the absolute value of product of the variable price and the number of events or time periods is less than or equal to the baseline price in order to take into account the varying usage of a service a consumer.

10. As per Claim 4, Rycraft in view of Official Notice teaches the method of claim 3 as described above. Rycraft teaches that the size of **X** can vary dependant upon consumer consumption. Rycraft does not **explicitly teach wherein the absolute value of product of the variable price and the number of events or time periods is equal to the baseline price**. Official Notice is taken that, depending on the value of **X**, the absolute value can be less than or equal to the baseline price. It would have been prima

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facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Rycraft to include the absolute value of product of the variable price and the number of events or time periods is equal to the baseline price in order to take into account the varying usage of a service a consumer.

11. As per Claim 5, Rycraft in view of Official Notice teaches the method of claim 2 as described above. Rycraft teaches that the size of **X** can vary dependant upon consumer consumption. Rycraft does not ***explicitly teach wherein the absolute value of product of the variable price and the number of events or time periods is less than the baseline price.*** Official Notice is taken that, depending on the value of **X**, the absolute value can be less than or equal to the baseline price. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Rycraft to include the absolute value of product of the variable price and the number of events or time periods is less than the baseline price in order to take into account the varying usage of a service a consumer.

12. As per Claim 6, Rycraft in view of Official Notice teaches the method of claim 2 as described above. Rycraft teaches that the size of **X** can vary dependant upon consumer consumption. Rycraft does not ***explicitly teach wherein the absolute value of product of the variable price and the number of events or time periods is greater than the baseline price.*** Official Notice is taken that, depending on the value of **X**, the absolute value can be less than or equal to the baseline price. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Rycraft to include the absolute value of product of the variable price and

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the number of events or time periods is greater than the baseline price in order to take into account the varying usage of a service a consumer.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Energy Efficiency (Reference V of the attached PTO-892) teaches a declining rate structure for utility systems.

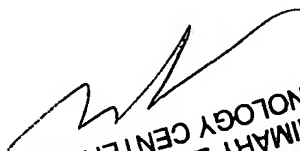
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonya Joseph whose telephone number is 571-270-1361. The examiner can normally be reached on Mon-Fri 7:30am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Nolan can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 3628

  
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